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August 28, 1998

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of BellSouth's Second Section 271 Application for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121

Dear Ms. Salas:

Enclosed please find a diskette formatted in IBM-compatible format using WordPerfect 5.1, in a read-only mode, containing the Reply Comments of AT&T Corp. in Opposition filed on August 28, 1998 in the above matter.

Respectfully yours,

Cassandra M. de Souza

1 August 28, 1998 (3:32pm)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



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| In the Matter of | ) | |
| Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana | ) | CC Docket No. 98-121 |

# REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECOND SECTION 271 APPLICATION FOR LOUISIANA

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August 28, 1998

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**Before the**
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| **Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana** | ) | **CC Docket No. 98-121** |

## REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECOND SECTION 271 APPLICATION FOR LOUISIANA

AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to the second application of BellSouth Corp. et al. ("BellSouth") for authorization to provide interLATA services originating in Louisiana.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The comments overwhelmingly confirm that BellSouth's second application for Louisiana again falls well short of complying with section 271, and even fails the basic task of remedying many of the defects identified by the Commission in rejecting BellSouth's previous applications. In particular, BellSouth is still not complying with its checklist obligations, including the critical duties

i) to provide the elements of its network to competitors on reasonable and nondiscriminatory terms;

ii) to provide nondiscriminatory access to its operations support systems;

iii) to provide all the performance measures necessary to show that it is complying with these obligations, in a form that does not disguise poor performance;

iv) to provide unbundled network elements at cost-based, forward-looking rates; and

v) to provide other checklist items, including reciprocal compensation, resale, interconnection, number portability, white pages, directory assistance, and access to poles, ducts, conduits, and rights of way.

Indeed, apart from a few brief and general endorsements of BellSouth's application, the only support BellSouth receives is from the Louisiana Public Service Commission ("LPSC") and from two other RBOCs (Ameritech and U S WEST). But the RBOCs' comments, which address only selected legal issues, are not comprehensive and therefore cannot support a finding that BellSouth has complied with section 271.

The LPSC's comments are likewise limited in scope. Although the LPSC purports to verify BellSouth's compliance with each checklist item, in fact it has conducted only limited and inadequate follow-up of BellSouth's checklist compliance since the Commission's rejection of BellSouth's first application. And, although the LPSC asks both the Justice Department and this Commission to supply a "point by point" and "detailed explanation" for its Evaluation and its decision on the application, LPSC Comments at 10, its own ten-page comments lack this same type of analysis for any issue. In fact, the LPSC simply "presumes" (at 3) that BellSouth is complying with many checklist items, which clearly is not adequate to "verify" (§ 271(d)(2)(B)) BellSouth's compliance, and is contradicted by the Commission's previous rejection of BellSouth's UNE-combination policy in South Carolina, as well as the numerous concerns repeatedly raised by CLECs and other third parties on multiple checklist requirements.

Part I of these reply comments will address the comments and evidence that confirm that BellSouth is not providing numerous checklist items. In particular, Part I.A will refute the legal claim that ILECs like BellSouth may comply with their obligations to offer access to UNEs at any technically feasible point by offering only a single method for recombining elements, even though several others are technically feasible. Part I.A will then describe the significant

evidence that collocation, the single method that BellSouth is insisting that CLECs use to recombine network elements, is inherently discriminatory. Part I.A also will discuss the commenters' evidence that BellSouth has again failed to commit itself to binding terms and conditions for allowing CLECs to combine network elements even under the one, discriminatory method that it does offer to CLECs.

Part I.B will then address the overwhelming evidence that BellSouth has failed to provide nondiscriminatory access to its OSS. Part I.C will discuss its failure to provide essential measures to judge its performance. Part I.D will refute the claims that BellSouth's LPSC-approved prices for interconnection and network elements are cost-based and forward-looking, and Part I.E. will briefly address the other checklist items that BellSouth is not providing.

Although the importance of full compliance with all checklist items means that the Commission should address BellSouth's pervasive noncompliance with them, the Commission should also reject BellSouth's claims that it is eligible to proceed under Track A. Part II details the indisputable proof provided by commenters, including the CLECs BellSouth purports to rely on under Track A, that no CLEC has yet become a predominantly facilities-based "competing provider" to Louisiana customers. Part II also reviews the evidence showing that PCS providers in Louisiana are not "competing providers" that qualify under Track A.

Part III sets forth the commenters' evidence that BellSouth and its long distance affiliate are currently operating in violation of section 272 and have not demonstrated that they will operate in accordance with that section if granted interLATA authority. Part IV responds briefly to the claims that BellSouth's entry would serve the public interest.

# I. THE COMMENTS CONFIRM THAT BELLSOUTH HAS FAILED FULLY TO IMPLEMENT ITS CHECKLIST OBLIGATIONS

The comments in this proceeding, as well as the Evaluation of the Department of Justice, confirm that BellSouth has yet to remedy the checklist noncompliance this Commission previously found just months ago, let alone fully to implement the competitive checklist.

## A. BellSouth Is Not Providing Combinations Of The Loop And Switching Elements

To open its markets and comply with the checklist, the petitioning BOC must satisfy the Act's requirements for all three means of local entry: resale, unbundled network elements, and facilities-based service. Ameritech Michigan Order ¶¶ 13, 21; South Carolina Order ¶ 195. In particular, AT&T concurs with the Department of Justice that "the availability of a means for efficiently combining UNEs is very important to the development of competition in all segments of the market." DOJ Eval. at 9. Despite the clear obligations that Congress and the Commission have imposed on ILECs, the comments (including those of CLECs, many of which have been seeking to employ combinations of UNEs since the Act was passed nearly two and one half years ago, see South Carolina Order ¶¶ 72-75 & n.200) demonstrate that BellSouth has resisted, rather than implemented, this critical obligation. As the Department of Justice stated, "there is still virtually no competition in Louisiana through use of unbundled network elements, and every reason to believe that there would be such competition if most of the impediments to UNE competition . . . were not still in place." DOJ Eval. at 3-4.

In particular, the comments show that BellSouth's application is deficient with respect to combinations of network elements in three distinct and important ways. First, BellSouth, contrary to the plain language of the Act and the Commission's Rules, improperly forces CLECs to rely exclusively on a single method of BellSouth's choosing for combining unbundled network

elements, and refuses to implement other technically feasible methods that CLECs have proposed. Second, the single method of combining elements on which BellSouth insists -- collocation -- inherently is not a "just, reasonable and nondiscriminatory" (§ 251(c)(3)) method. Finally, BellSouth has not yet made a detailed and binding commitment in an interconnection agreement to provide any CLEC with collocation as a means for combining elements, let alone demonstrated its practical ability to process and provision orders for unbundled elements that are to be combined by CLECs. For each of these reasons, BellSouth's application must be rejected.

**1.** The comments fully refute the view that BellSouth is justified in mandating only one method of access to unbundled elements, and demonstrate that CLECs are requesting technically feasible alternative means for recombining network elements.[1] Only Ameritech joins BellSouth and contends that "collocation is the only authorized method" for CLECs to combine unbundled network elements. Ameritech Comments at 14-16. Unlike BellSouth, which relies only upon its misreading of the United States' petition for certiorari to support its view, see AT&T Comments at 13, Ameritech attempts to glean some support for this position from the Act. Its arguments, however, fare no better than BellSouth's and are likewise squarely foreclosed by the Act's plain meaning and by the Commission's rules.

Ameritech states that "collocation is an authorized method" to obtain access to network elements and that it is "the only method" expressly mentioned "in the Commission's rules;" from those unremarkable facts, Ameritech then leaps to the conclusion that CLECs are permitted to recombine network elements only in collocated space. Ameritech Comments at 14-15. Ameritech's claim makes no sense as a matter of logic. It is, moreover, foreclosed by the plain

[1] AT&T Comments at 12-15; MCI Comments at 16-19; Intermedia Comments at 15-16; Excel Comments at 5-8; Sprint Comments at 44-45; see infra note 3 (citing commenters' discussions of alternatives to collocation).

language of section 251(c)(3), which requires ILECs to provide, to "requesting carriers," "nondiscriminatory access to" unbundled network elements "at any technically feasible point." § 251(c)(3) (emphasis added). Likewise, Ameritech completely ignores the Commission's rules stating that CLECs "are not limited to" physical and virtual collocation as the only methods of access to network elements. See 47 C.F.R. §§ 51.321(a), (b) (emphasis added). Notably, Ameritech ignores that Rule 51.321, like numerous others of the Commission's unbundling rules, was upheld by the Eighth Circuit against the challenge of Ameritech and other ILECs that such rules were too intrusive.[2]

Ameritech also contends (at 15) that collocation is the only authorized method because of "the backdrop against which Congress enacted § 251(c)(6)." According to Ameritech, under the decision in Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994), the Commission had no authority under the pre-1996 Communications Act to require ILECs to allow physical access to their premises. Based on the Act's legislative history, which shows that section 251(c)(6) was added to provide the Commission with that express authority, Ameritech concludes that section 251(c)(6) provides the only authorized means of access -- collocation.

Ameritech's tortured reliance on a legislative "backdrop," even if its explanation of the backdrop were correct, could never be sufficient to trump the plain, unmistakable, and broad duty imposed by section 251(c)(3) that requires ILECs to provide nondiscriminatory access "at any technically feasible point." The plain text of section 251(c)(6) also precludes Ameritech's claim that that section's legislative "backdrop" limits CLECs to collocation: to the contrary, the

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[2] Iowa Utils. Bd., 120 F.3d at 815-16; see also Local Competition Order ¶ 549 (a "requesting carrier may choose any method of technically feasible . . . access to unbundled elements"); South Carolina Order ¶¶ 184, 207. Accordingly, the Act and Commission Rules require all ILECs to implement requesting carriers' technically feasible requests for access in order for CLECs to combine network elements.

text of section 251(c)(6) nowhere states that CLECs are confined to collocation as a method of access to unbundled elements, nor in any way limits the broad duty found in section 251(c)(3). In all events, there is a far more reasonable explanation than Ameritech's that accounts for the legislative "backdrop" and for the presence of both section 251(c)(3), with its general duty to provide access, and section 251(c)(6), with its specific requirement of collocation: Congress simply wanted to ensure that ILECs would be unable to narrow the scope of the Commission's authority under section 251(c)(3), as they had with section 201(a) in Bell Atlantic, and therefore added the unmistakable duty in section 251(c)(6) to provide collocation.

Accordingly, under the plain language of the Act and the Commission's Rules, if a "requesting carrier" (§ 251(c)(3)) seeks a technically feasible method of accessing unbundled network elements in order to combine them, the ILEC is obligated to allow such access. Notably, as the Department of Justice observes, "several alternative methods have been suggested that would appear to impose a significantly smaller burden on competition than BellSouth's collocation requirement."[3] For example, the comments of CLECs and other parties demonstrate the significant interest in developing an electronic means, such as the recent change capability, of separating and recombining network elements. In addition, in a recent recommended decision, issued after an investigation that focused upon various methods for combining network elements, an ALJ of the New York Public Service Commission concluded that "an electronic method for obtaining and combining network elements, or a comparable substitute, appears essential for mass market competition." NY ALJ Findings at 46 (attached

[3] DOJ Eval. at 16; see AT&T Comments at 20-22, 24-25 & Falcone Aff. ¶¶ 151-214; Excel at 5-8 (requesting access to recent change); CompTel Comments at 14-19 (same); Sprint Comments at 44-45 (describing several alternatives); WorldCom Comments at 22-27 (noting "several instances in which the interconnection between different elements in a telephone network is customarily controlled by means of electronics or software rather than manually").

as Exh. 1). Moreover, after hearing extensive testimony, she rejected claims put forth by Bell Atlantic that electronic methods to recombine UNEs constitute "sham" unbundling. Id. at 13-14. Rather, she found that any electronic method that "functionally unbundles and recombines elements . . . complies with the Act." Id. at 14 (emphasis added). Based on these findings, she recommended that electronic means for accomplishing the combination of network elements, including the recent change method, be discussed in a collaborative process. Id. at 46 The Commission should reinforce the growing consensus of state commissions rejecting a collocation requirement (see AT&T Comments at 22-25), as well as the views of the Department of Justice (see DOJ Eval. at 16), and find that BellSouth must provide alternatives, including electronic methods, for combining network elements that are needed to support the mass market entry that CLECs and consumers have been demanding.

**2.** Even if Ameritech were correct in its claim that ILECs need offer CLECs only one method of access by which to combine network elements, insisting upon collocation as the exclusive method that a CLEC must use would still violate the Act. That is because, as the Department of Justice and state commissions have found, and as other commenters have demonstrated, that "mode of combining UNEs inherently increases the cost and diminishes the quality of service the new entrant can provide compared to BellSouth."[4] The Commission

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[4] DOJ Eval. at 10; see NY ALJ Findings at 10 (finding that a variety of collocation methods "are unacceptable to support combination of elements to serve residential and business customers on any scale that could be considered mass market entry"); Kentucky SGAT Order at 7 ("[T]he requirement that a CLEC may combine UNEs only by means of collocation is both discriminatory and unwarranted") (attached as Exh. 2); AT&T Comments at 16-25 & Falcone Aff. ¶¶ 55-150; MCI Comments at 11-21 & Henry Decl. ¶ 22 (collocation is "unreasonable and discriminatory" and requires manual work at the MDF "that cannot conceivably bear the amount of traffic that would be required to have collocation work at a commercially viable level"); CompTel Comments at 19-21 ("no manual process to combine the loop/switch network elements will ever satisfy the Act's requirement of nondiscrimination . . . Critically, manual processes (continued...)

should act now and, consistent with the Department's Evaluation, find that collocation as a method to recombine network elements is unreasonable and discriminatory under section 251.

The comments amply illustrate why collocation fails to discharge an ILEC's duties under that section. As an initial matter, the "physical disconnection" that results because of BellSouth's collocation requirement "virtually guarantees that customers opting for competitive services will suffer service outages of indefinite duration."[5] In addition, BellSouth's collocation requirement will place artificial limits upon CLEC market entry for several reasons. First, collocation "is a time-consuming process for any competitor contemplating mass market entry" because it must establish collocated space "in a large number of BellSouth offices," which could take "up to four years" for BellSouth to implement,[6] and which may not even be possible in all cases because of "scarce" space availability in those offices and on MDFs.[7] Second, significant

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[4] (...continued)
cannot support the form of mass-scale entry and competition necessary for entrants to compete with a BOC's ability to offer interLATA services"); Intermedia Comments at 17-20 (collocation requirement is "patently anticompetitive," and presents "major impediments to the growth of facilities-based competition in the local exchange market in Louisiana"); Sprint Comments at 45 (stating reasons why collocation will "create a barrier to competitive entry"); WorldCom Comments at 21-25 & Porter Aff. ¶¶ 4-6.

[5] WorldCom Comments at 25; see id. (collocation requires "service outages that will have a devastating and discriminatory effect on competitors' ability to attract new business"); DOJ Eval. at 17 (finding that "each customer must be taken out of service for at least some period of time, and if the coordinated cut-overs are not performed correctly, substantial service outages may occur"); AT&T Comments at 16-17 & Falcone Aff. ¶¶ 56-69; Intermedia Comments at 18 (stating that collocation creates "unnecessary customer outages and delays"); Excel Comments at 7.

[6] DOJ Eval. at 12; see AT&T Comments at 18 & Falcone Aff. ¶¶ 71, 74-87; ALTS Comments at 17 (stating that it is "impossible to discern" on the present record that "collocation is being offered in a timely manner"); Sprint Comments at 45 (citing "unreasonable delays associated with physical collocation"); see also Excel Comments at 6; Intermedia Comments at 17, 19.

[7] DOJ Eval. at 13; see AT&T Comments at 19 & Falcone Aff. ¶¶ 72-73, 104-06; WorldCom (continued...)

time is needed to perform the "complex and labor intensive tasks" of establishing cross-connections, particularly if the "inevitable risk of human error" causes additional delay; significantly, BellSouth has not "shown through commercial use" that it can perform such work and "physically deliver a substantial volume of unbundled loops to collocation arrangements."[8] Third, collocation "would likely degrade the CLEC's service quality as compared to BellSouth," because it "at least doubles the total number of cross-connect points, thereby increasing the potential points of failure."[9] Collocation would also "degrade the quality of the service received by [a] customer" served by IDLC systems, a growing and significant portion of the market.[10]

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[7] (...continued)
Comments at 22 (physical collocation imposes an "artificial restraint of space on the number of competitors" that can combine UNEs "in any one central office"); Intermedia Comments at 18, 20; see also NY ALJ Findings at 22-23 (finding that record in New York "gives cause for concern about space availability for new" CLECs in Bell Atlantic central offices, and concluding that Bell Atlantic "can construct a limited number of cages in a month," which causes "market inroads via combining elements [to be] tediously slow, insufficient to handle possible ubiquitous mass market entry on a commercially reasonable schedule").

[8] DOJ Eval. at 14, 16-17; see AT&T Comments at 18-19 & Falcone Aff. ¶¶ 88-103; CompTel Comments at 20; MCI Comments at 19; cf. NY ALJ Findings at 9 (noting that Bell Atlantic claims for provisioning of UNE-combinations were "illustrative of a theoretical maximum, rather than actual current capacity," and that Bell Atlantic's calculations of demand for UNE-combinations do not take into account "a genuinely competitive market, in which customers not only move to competitors and back to the incumbent, but between competitors"); see infra pages 13-14 (discussing lack of actual experience with providing UNE-combinations, and poor performance for comparatively simpler process of providing unbundled loops).

[9] DOJ Eval. at 14; see AT&T Comments at 16 & Falcone Aff. ¶¶ 113-22; MCI Comments at 19 & Henry Aff. ¶ 22 (collocation "requires additional cross-connects and senselessly introduces many additional points of failure."); Intermedia Comments at 18 (collocation introduces "multiple points of failure in the network") see also NY ALJ Findings at 27 (finding that "collocation methods . . . add[] cross-connects to the system, which adds human error to the equation of network security and end-user impact").

[10] DOJ Eval. at 14; see AT&T Comments at 20 & Falcone Aff.¶¶ 107-12; MCI Comments at 21-22 (noting that "[w]hen its own subscribers are served by IDLC facilities, BellSouth provisions individual loops . . . electronically in the switch;" contrasting BellSouth's policy that (continued...)

Next, "using collocation to combine BellSouth UNEs substantially raises the cost of entry above BellSouth's costs for the same network elements," which is plainly discriminatory; all of these costs "could be avoided" but for a collocation requirement, which means the costs are "unnecessary" and unreasonable.[11] Finally, collocation also presents insurmountable barriers for CLECs seeking to combine other network elements, in particular the loop and unbundled transport.[12]

For each of these reasons, even if BellSouth could dictate only one method of access for CLECs to combine network elements, BellSouth would not be complying with the Act because its choice of collocation as the method is inherently not "just, reasonable, and nondiscriminatory" (§ 251(c)(3)) and "substantially impede[s] competition" through unbundled network elements. DOJ Eval. at 9.

**3.** Finally, the comments demonstrate that BellSouth's terms for using collocation to recombine network elements remain "legally insufficient" (South Carolina Order ¶ 197)

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[10] (...continued)
IDLC loops must be physically broken apart with its view that where "other parts of its network could not be feasibly separated," BellSouth "offer[s] them in combination"); see also NY ALJ Findings at 46 ("Particularly for those customers -- a growing group -- served through IDLC technology, a reversion to a manual technology is inadvisable").

[11] DOJ Eval. at 13; see AT&T Comments at 19 & Falcone Aff. ¶¶ 123-28; MCI Comments at 19 (collocation "requires substantial up-front costs"); WorldCom Comments at 25 (collocation has an "unneeded and discriminatory cost burden"); Intermedia Comments at 17-18 (stating impact of "unreasonably huge costs"); Sprint Comments at 45 (noting "substantial cost burdens" associated with collocation methods); CompTel Comments at 19-20; Excel Comments at 6-7.

[12] See DOJ Eval. at 13 n.24; AT&T Comments at 20 & Falcone Aff. ¶¶ 132-38; MCI Comments at 27 ("BellSouth's collocation requirement prevents MCI from obtaining reasonable, nondiscriminatory access" to "unbundled loops and unbundled transport in combination"); Intermedia Comments at 20-22 (requesting "Extended Link" alternative, a "combination of a local loop, multiplexing" and "transport" that "greatly expands the CLEC's addressable customer base"); e.spire Comments at 22 n.38; Excel Comments at 5-6.

because BellSouth has yet to commit itself in interconnection agreements (or even in its SGAT, itself insufficient in this Track A application) to definite terms and conditions for recombining network elements.[13] See Ameritech Michigan Order ¶ 110. For example, as the Department of Justice notes (at 11 n.19), "BellSouth's interconnection contracts have not been amended to provide for cost-based pricing of UNEs to be used in combinations."

Nevertheless, the LPSC re-affirms its approval of BellSouth's Louisiana SGAT. See LPSC Comments at 4. It does so, however, without addressing any of the Commission's concerns (which was necessary because the Louisiana SGAT's terms for combining network elements are virtually identical to those rejected in South Carolina) and without addressing the numerous other concerns that the Department and CLECs have raised. The LPSC's views on this issue are thus entitled to no weight.

Indeed, as the comments show, even the commitments that BellSouth has made for the first time in this application are inadequate and fail to respond to the concerns raised by the Commission in its South Carolina Order (¶¶ 202-06). Thus, although BellSouth commits to some intervals for collocation, they are incomplete, subject to numerous conditions, and, in all

[13] See AT&T Comments at 25-30; MCI Comments at 20 ("BellSouth again provides no evidence that its interconnection agreements contain definite terms and conditions for recombining network elements") (quotation omitted); ALTS Comments at 17 ("BellSouth's current offer . . . suffers from the same uncertainty and vagueness that infected its prior collocation proposals").

events, inadequate.[14] And, once again, BellSouth fails to commit to specific and definite terms for space preparation fees for collocation.[15]

In addition, BellSouth "has not demonstrated through actual commercial use that it would be able to provide, in a timely and reliable fashion, either the collocation arrangements or the coordinated loop and port cut-overs that would be needed to support mass market entry based on UNE combinations." DOJ Eval. at 16. As to combined UNEs, BellSouth has not presented any data of actual commercial use, or, indeed, "any meaningful external evidence," such as testing, showing that it can perform the "complex and labor-intensive tasks in the high volumes that would be required for mass market competition." DOJ Eval. at 16; AT&T Comments at 30; MCI Comments at 16-18; WorldCom Comments at 21-22. Moreover, the Commission should be especially dubious, in the absence of actual provisioning, of BellSouth's ability to provide UNEs for combinations because the record here continues to demonstrate that BellSouth is unable to provide reasonable and nondiscriminatory access to individual UNEs -- particularly loops and unbundled switching.

Thus, e.spire, which has installed its own switch in New Orleans and requires unbundled loops to serve its customers, reports that "BellSouth's efforts to provision unbundled loops for e.spire in New Orleans have been plagued by serious operational flaws, resulting in repeated unexpected disconnects, cutovers taking place several hours after the scheduled cutover time,

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[14] See DOJ Eval. at 12-13; AT&T Comments at 18 & Falcone Aff. ¶¶ 74-87; MCI Comments at 20-21 (BellSouth's intervals are "nonbinding" and "woefully inadequate"); Intermedia Comments at 18-19.

[15] See DOJ Eval. at 22-24 (because "BellSouth offers no prices" for space preparation, "we are left with the same significant competitive concerns -- namely, the risk of unreasonable prices and drawn-out negotiations that may deter or delay entry"); AT&T Comments at 29-30 & Falcone Aff ¶¶ 129-31; Intermedia Comments at 19 (lack of space preparation rates means CLECs "must worry about unknown costs"); MCI Comments at 20; Excel Comments at 6.

and significant number portability failures." e.spire Comments at 2, 23. e.spire's Comments set forth additional serious BellSouth errors, including an inability to provision service with the features "as ordered," service quality problems such as "low volume," and technicians that are "[un]available to perform cutovers" or that "simply [do] not show up." Id. at 23-25. Equally as troubling is e.spire's report that "the provisioning problems experienced by e.spire in New Orleans are, in many instances, identical to those it experienced in Columbus, Georgia beginning a year and eight months ago," id. at 26, which indicates that BellSouth's performance is not significantly improving and that BellSouth continues to impose upon CLECs the same errors in each market they choose to enter.

Likewise, even though KMC has provided facilities-based service to less than thirty business customers in Louisiana, it has "experienced difficulties with BellSouth in coordinating cut-overs." KMC Comments at 22-23. KMC reports that its customers have suffered service outages because of BellSouth and, as one illustration, recounts how its customer was "disconnected from the BellSouth switch two days before the specified cut-over date," causing a loss of service for "two hours," only to lose service yet again a few days later due to a BellSouth error. Id. KMC also reports that in other instances BellSouth was not responsive to service outages, resulting in "more serious delays in getting the customer's service restored." Id. at 23. Given BellSouth's problems -- and particularly problems that have arisen time and again -- in handling the more basic unbundled loop cutover, it is impossible to conclude that BellSouth could perform the more complex process of delivering multiple network elements to collocated space for CLECs to combine them.

**4.** In addition to these deficiencies with respect to UNE-combinations, the LPSC failed to re-evaluate whether BellSouth is providing individual UNEs on just, reasonable and

nondiscriminatory terms.[16] Notably, commenters point to significant evidence that BellSouth is not providing unbundled switching consistently with the Act and the Commission's Rules, and is refusing to provide access to unbundled loops capable of transporting high-speed digital signals. See MCI Comments at 25-27; Intermedia Comments at 22-24. Thus, Intermedia and MCI allege that BellSouth is not providing access to xDSL loops, ADSL loops, and other similar equipment, an ILEC obligation that the Commission recently re-affirmed. See Wireline Services Order ¶¶ 52, 57; see also Local Competition Order ¶¶ 380, 382. The Commission has found that "advanced services are telecommunications services, and . . . the facilities and equipment used to provide advanced services are network elements subject to the obligations in section 251(c)." Wireline Services Order ¶ 57. Accordingly, in order to comply with the checklist, BellSouth must provide those loops and associated equipment at cost-based rates.

### B. BellSouth Is Not Providing Nondiscriminatory Access To Operations Support Systems

Virtually all the comments filed conclude that BellSouth remains well short of demonstrating that its OSS provide the same functionality as BellSouth's own systems and are operationally ready for CLECs to use.[17] As the Department of Justice states, "BellSouth has

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[16] For example, nothing in the LPSC's comments undercuts the points, as AT&T set forth in its initial comments, that BellSouth's performance to date demonstrates its inability and unwillingness to provide CLECs with all of the features, functions, and capabilities of the local switching element. AT&T Comments at 50-56. Most notably, BellSouth is unwilling and unable to provide CLECs with the information necessary to bill IXCs for exchange access services. Id. at 50-51. BellSouth also refuses to provide AT&T with the ability to order features (e.g., call blocking) individually or in packages other than as BellSouth currently offers them, and has yet to implement customized routing to a CLEC's operator services and directory assistance centers. Id. at 53-55; see MCI Comments at 60-62 (failure to provide technically feasible customized routing).

[17] DOJ Eval. at 26-37; see AT&T Comments at 31-48; MCI Comments at 40-60 ("BellSouth's OSS contains functional deficiencies that prevent it from providing service at parity" and is "far (continued...)

not yet demonstrated that it has developed and deployed wholesale support processes that are adequate to ensure an open market." DOJ Eval. at xii. On this basis alone, the Commission should deny BellSouth's application.

Only the LPSC provides any support for BellSouth on this checklist obligation. See LPSC Comments at 4-5. But the LPSC never discusses the critical issue: whether BellSouth is actually providing nondiscriminatory access to its OSS, which is the standard that must be met before BellSouth's OSS can be deemed in compliance with the Act. And even its half-hearted endorsement of BellSouth's OSS is, once again, incomplete and conclusory, and is also apparently based in part on technical "demonstrations" orchestrated by BellSouth and closed to CLEC participation. Such conclusions are not entitled to any weight from this Commission and are, in any event, outweighed by the findings of the LPSC's ALJ, the conclusions of the Department of Justice, and the complaints of CLECs, both large and small, that BellSouth is still not providing the nondiscriminatory access to OSS that is essential to ensure meaningful competition in Louisiana.

**1.** The LPSC concludes (at 4) that "significant progress has been made in this area of OSS," but it again falls short of finding that BellSouth has complied with the Act or the Commission's rules. At most, the LPSC lists the enhancements BellSouth has made and claims only that "BellSouth has become proficient in the operation of the OSS" LPSC Comments at 4-5. This tepid support falls well short of "verify[ing]" (§ 271(d)(2)(B)) that BellSouth is

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[17] (...continued)
from operationally ready"); Sprint Comments at 27-37 (stating that "a great deal of work must still be done before [BellSouth] will meet the 'nondiscrimination' and 'meaningful opportunity to compete' standards); see also e.spire Comments at 29-33; ALTS Comments at 13-17; Intermedia Comments at 8-13; TRA Comments at 24-26; KMC Comments at 10-22; Time Warner Comments at 11-16; State Comments at 2-4; CompTel Comments at 5-10; Omnicall Comments at 2-3; WorldCom Comments at 19-21.

complying with its obligations to provide CLECs with the same access to its OSS (i.e., in terms of functionality, timeliness, reliability, etc.) that its own retail operations have. No party disputes that BellSouth has made enhancements to its OSS since its last applications, but providing enhancements does not ensure compliance with the Act. Rather, demonstrated parity of access is required, and because the LPSC does not even purport to find any level of parity, the Commission should again reject BellSouth's application.

**2.** Moreover, even the limited conclusions drawn by the LPSC regarding OSS should not be given any deference because those findings are largely unexplained, and are based on closed technical "demonstrations," rather than data from actual commercial usage.[18] As before, the LPSC did not "articulate the analysis it performed in assessing OSS compliance, . . . the basis for its conclusion on OSS, or its reasons for rejecting the recommended decision" of its ALJ. See DOJ First La. Eval. at 18-19. The absence of these critical features from the LPSC's decision-making process alone allows the Commission to disregard the LPSC's conclusions. See Ameritech Michigan Order ¶ 30.[19]

Likewise, the Commission should give no weight to the LPSC's statements that it "has been diligent in its monitoring of the BellSouth OSS enhancements and modifications." LPSC Comments at 4. As with BellSouth's initial application, see Norris Aff. ¶¶ 13-24, the Commission's "monitoring" consisted largely of attending a demonstration arranged by BellSouth to showcase its OSS. See LPSC Comments at 4. Such demonstrations cannot override evidence

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[18] AT&T Comments, Norris Aff. ¶¶ 13-24; DOJ First La. Eval. at 18-19.

[19] Indeed, the only record which even begins to approach being "detailed and extensive" (id.) in Louisiana on BellSouth's OSS is the seven days of testimony from numerous witnesses, which led the Chief ALJ to find numerous defects with BellSouth's OSS, many of which still remain today. See ALJ Recommendation; see also AT&T Comments, Norris Aff. ¶¶ 5-12.

drawn from actual commercial usage of BellSouth's OSS that demonstrate that CLECs do not have nondiscriminatory access to OSS at parity with BellSouth's own retail operations.[20] And because BellSouth's staged demonstration was not open to CLECs (in contrast to the proceedings before the ALJ), the LPSC simply did not have before it the complete record that cross-examination and CLECs' presentation of their own evidence of non-compliance would provide.[21]

**3.** Finally, and even more fundamentally, even if the LPSC had asserted that BellSouth was providing parity of access, and had attempted to explain that determination in detail, such comments would be easily outweighed by the record set forth by other commenters. Those commenters, along with the Department of Justice, have set forth, in a "point by point" and "detailed" analysis (cf. LPSC Comments at 10), numerous deficiencies with BellSouth's OSS that deny nondiscriminatory access. This evidence leaves no doubt that BellSouth has not yet remedied the numerous problems the Commission previously identified with BellSouth's OSS, see, e.g., DOJ Eval. at 27 n.51, let alone demonstrated that it has resolved other significant defects that still preclude CLECs from obtaining nondiscriminatory access to OSS.

Thus, both CLECs and the Department of Justice have shown that BellSouth has not established or followed proper change control procedures, or provided the business rules, that are essential for CLECs to continue to be able to use BellSouth's systems. The Department of

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[20] A demonstration is even less probative than testing, which carries no weight where actual usage demonstrates lack of parity. See Ameritech Michigan Order ¶ 138.

[21] Other state commissions in BellSouth's region, by contrast, have conducted workshops and other proceedings that are on the record and that provide CLECs and other parties with these opportunities. For example, the Kentucky and Alabama Public Service Commissions both permitted CLEC questioning during on-the-record proceedings in their states, and the Florida Public Service Commission also ordered an audit of BellSouth's OSS, which included interviews with CLECs.

Justice found that "CLECs need to receive adequate documentation" of BellSouth's proposed changes, "adequate notice of upcoming changes," and "adequate opportunities for carrier-to-carrier testing in advance of migration." DOJ Eval. at 40. Other commenters and the Department concluded that BellSouth has not established that it has "reliable processes for implementing system modifications."[22]

The comments also show -- based on actual usage -- that the interfaces that BellSouth has deployed still do not provide access equivalent to what BellSouth enjoys, and that many of the deficiencies in those interfaces have already been identified by the Commission, but not corrected by BellSouth.[23] Thus, for the pre-ordering interfaces, CLECs confirm that they, unlike BellSouth, are not able to obtain a firm, calculated due date for when service will be installed.[24] BellSouth's retail representatives, by contrast, can obtain firm due dates

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[22] DOJ Eval. at 40; see AT&T Comments at 35-39; MCI Comments at 46 (BellSouth's refusal to adopt change control is "unreasonable" and "in conflict with the common practice in the software industry and even with the practice of other BOCs"); KMC Comments at 18 ("BellSouth has also failed to notify KMC in advance when it changes it procedures for processing orders," resulting in "processing delays" and customer "inconvenience").

[23] DOJ confirms that BellSouth's evidence of testing is insufficient. DOJ Eval. at 27 & n.50, 36-37; AT&T Comments at 34. DOJ contrasts the BellSouth/Ernst & Young analysis unfavorably with the ongoing review of Bell Atlantic's OSS in New York being conducted by KPMG Peat Marwick and Hewlett-Packard. As DOJ notes, the New York testing has not begun and lacks several important implementation details. Moreover, as AT&T has stated to the New York PSC, the current test plan in New York suffers from a number of deficiencies that must be corrected before that test could even in theory accurately determine whether the OSS there provide nondiscriminatory access. However, DOJ correctly points out that the proposed testing in New York includes two elements indispensable to reliable, independent third-party testing: there, KPMG was selected by the NY PSC, not by the BOC, and reports to the PSC. Second, CLECs in New York, at least to some extent, will be participating in the testing. While other features are also necessary for accurate testing, the absence of these factors here means that BellSouth's tests must be disregarded.

[24] South Carolina Order ¶¶ 168, 167-73; see AT&T Comments at 40; MCI Comments at 42, 47 ("[I]t remains the case today" that "BellSouth ha[s] a greater ability to provide accurate due (continued...)